

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**DAVID W. AIKEN, JR. and MARILYN M. AIKEN**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO.1:06CV741LTS-RHW**

**USAA CASUALTY INSURANCE COMPANY**

**DEFENDANT**

**JURY INSTRUCTION C-1A**

The plaintiffs have met their initial burden of proving that they suffered an accidental direct physical loss of their buildings and the contents of those buildings during a windstorm, a peril that is covered under their USAA homeowners policy. However, the plaintiffs' USAA policy provides that windstorm losses caused or contributed to by storm surge flooding are an exception to this coverage.

USAA has the burden of proving, by a preponderance of the evidence, what portion of the plaintiffs' windstorm losses were caused or contributed to by storm surge flooding, and to the extent USAA meets its burden of proof, it does not owe the plaintiffs policy benefits for the losses caused or contributed to by storm surge flooding.

By paying the plaintiffs \$93,762 for damage to their buildings and \$78,141 for damage to the contents of their buildings, USAA has admitted that at least this amount of damage to the plaintiffs' buildings and the contents of those buildings was not caused or contributed to by storm surge flooding.

Conversely, by accepting payment of \$250,000 for damage to their buildings and \$28,200 for damage to the contents of their buildings in benefits under their flood policy, the plaintiffs have admitted that at least this amount of their loss was caused by storm surge flooding.

Based on the evidence you have heard, it will be up to you to decide what amount of damage to the plaintiffs' buildings and contents, if any, above the \$278,200 paid under the flood policy was caused or contributed to by storm surge flooding, and is therefore not covered by the USAA policy. On this issue, USAA has the burden of proof. To the extent you conclude that USAA has met this burden of proof, USAA does not owe the plaintiffs any of the additional damage caused or contributed to by storm surge flooding.

The unpaid balance of coverage under the USAA policy for damage to the plaintiffs' buildings is \$272,238. The maximum that you may award for the loss of the plaintiffs' buildings is the remaining coverage of \$272,238. The minimum you may award is \$0.

The unpaid balance of coverage under the USAA policy for damage to the contents of the plaintiffs' buildings is \$154,849. The maximum that you may award for the loss of the contents of the plaintiffs' buildings is the remaining coverage of \$154,849. The minimum you may award is \$0.

You have heard conflicting testimony concerning the events that occurred during Hurricane Katrina, and it will be up to you to decide what evidence you find more persuasive. You are the finders of fact, and it is your duty as jurors to impartially evaluate the evidence you have heard and decide what you believe happened at the plaintiff's residence during Hurricane Katrina and whether the plaintiff's losses were more likely than not caused by wind or by storm surge flooding. Your verdict should reflect your conclusions.

The plaintiffs have the ultimate burden of proving that their losses are covered under the USAA policy, and the plaintiffs have the ultimate burden of proving the extent of their covered losses. USAA bears only the burden of proving the extent to which the plaintiffs' losses are attributable to a cause, in this case storm surge flooding, that is excluded under the terms of the policy.

I have prepared a form for you to use after you have deliberated and reached a unanimous verdict. You should fill in the amounts, if any, you have determined to have been proved by a preponderance of the evidence; you should all sign this form; and your foreperson should then put the date of your decision on the form and notify the court security officer that you have reached your verdict.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**DAVID W. AIKEN, JR. and MARILYN M. AIKEN**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO.1:06CV741LTS-RHW**

**USAA CASUALTY INSURANCE COMPANY**

**DEFENDANT**

**JURY INSTRUCTION C-2**

You need not decide the fair market value of the plaintiffs' dwelling, other structures, and contents. These values have been decided by the Court. The Court has already made appropriate deductions for prior flood insurance payments under the plaintiffs' separate flood policy and prior payments for wind damage under the USAA homeowners policy. Your verdict form sets out the maximum amount and the minimum amount you may award for wind damage coverage that has not yet been paid under the USAA homeowners policy, and your decision will reflect the amount of damages, if any, within this range of alternatives that you find by a preponderance of the evidence to be wind damage payable under the terms of the USAA homeowners policy.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**DAVID W. AIKEN, JR. and MARILYN M. AIKEN**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO.1:06CV741LTS-RHW**

**USAA CASUALTY INSURANCE COMPANY**

**DEFENDANT**

**JURY INSTRUCTION C-2A**  
**ANTI-CONCURRENT CAUSE PROVISION**

The plaintiffs' USAA policy excludes coverage for all damage caused by storm surge flooding, even if wind contributed to cause this flood damage. All damage to the plaintiffs' property that was caused by storm surge flooding is excluded even if the storm winds concurrently or in any sequence caused or contributed to this excluded storm surge flood damage.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**DAVID W. AIKEN, JR. and MARILYN M. AIKEN**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO.1:06CV741LTS-RHW**

**USAA CASUALTY INSURANCE COMPANY**

**DEFENDANT**

**Jury Verdict**

We the jury find that \$\_\_\_\_\_ (\$0 to \$272,238) of the damage to the plaintiffs' dwelling and other structures was caused by windstorm and not by storm surge flooding, and we award this amount as insurance compensation for damage to the plaintiffs' dwelling and other structures under the plaintiffs' USAA policy.

We the jury find that \$\_\_\_\_\_ (\$0 to \$154,849) of the damage to the contents of the plaintiff's dwelling was caused by windstorm and not by storm surge flooding, and we award this amount as insurance compensation for damage to the contents of the plaintiffs' dwelling under the plaintiffs' USAA policy.

Signed, the jury:

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

Unanimous verdict returned this \_\_\_\_\_ day of January, 2008.